

SEP - 2 2004

David E. Welch, Clerk  
Charlotte Division  
RMS

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA

In Re:

MOHIEDEN Z. OMAR,

Debtor(s).

) Case No. ~~01-30975~~  
) Chapter 7

01-30795

JUDGMENT ENTERED ON SEP - 2 2004

**ORDER ON MOTIONS BY METROLINA ORTHOPAEDIC AND SPORTS  
MEDICINE CLINIC. P.A., JOSEPH ESTWANIK, M.D. AND  
CHARLOTTE MECKLENBURG HOSPITAL AUTHORITY TO DETERMINE  
ENTITLEMENT TO AND DISBURSEMENT OF SETTLEMENT PROCEEDS**

These matters came before the court on the *Motion to Determine Entitlement to and Disbursement of Settlement Proceeds* by Metrolina Orthopaedic and Sports Medicine Clinic, P.A. and Joseph Estwanik, M.D. (collectively, "Metrolina") and the *Motion to Determine Disbursement of Settlement Proceeds by Charlotte-Mecklenburg Hospital Authority* ("CMHA") (collectively, with Metrolina's motion, the "Motions"). It appears that notice of the Motions was proper, and no objections to the Motions were filed. A hearing was held on August 26, 2004, and Lee Olive of The Olive Law Firm ("Olive Firm"), appearing for the debtor in this case, presented objections to the Motions in open court. The court, having reviewed the pleadings and considered the arguments of counsel, finds and concludes as follows:

### **JURISDICTION**

1. The court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding as defined in 28 U.S.C. § 157(b)(2).

### **FACTUAL BACKGROUND**

2. Beginning on or about June 9, 2000 and continuing through April 26, 2001, the debtor in this case (the "debtor") received medical services from CMHA and its various subsidiaries as a result of injuries the debtor had received. The total of the uncompensated medical expenses rendered by CMHA to the debtor through May 11, 2004 is \$23,765.58.

3. Also in connection with the debtor's personal injuries, beginning on June 26, 2000 and continuing through December 21, 2000, Metrolina provided various medical services to the debtor. Charges associated with these medical services total \$8,545.00.

4. The debtor filed a voluntary petition pursuant to chapter 7 of the United States Bankruptcy Code on March 23, 2001.

5. Schedule B of the debtor's petition lists a "Personal injury claim pending - amount unknown" among the debtor's assets. Accordingly, this personal injury claim was included in the debtor's bankruptcy estate.

6. The debtor claimed as exempt a "Personal injury claim pending - amount unknown" on Schedule C of his bankruptcy petition

citing N.C. Gen. Stat. § 1C-1601(a(8)) as the authority for that exemption.

7. In pursuing his personal injury claim, the debtor was represented by attorneys associated with the Olive Firm, most recently by Lee Olive ("Olive") of that firm.

8. Metrolina and CMHA provided written notice to the Olive Firm of their lien claims, pursuant to N.C. Gen. Stat. § 44-49, against the proceeds of any personal injury settlement.

9. Metrolina and CMHA also provided copies of billing statements and medical records to the Olive Firm. CMHA charged \$73.25 in fees for the records provided, which fees were paid by the Olive Firm. Metrolina added \$10 in copying costs and a \$50 charge for reviewing and preparing a narrative of the medical records to its billing statements but has not received payment for the same.

10. Sometime subsequent to filing the bankruptcy case, the debtor, through the Olive Firm, received a settlement amount on his personal injury claims.

11. Metrolina and CMHA have made demand on the Olive Firm for payment of their medical liens. Olive indicated that the debtor would not authorize disbursement of the settlement proceeds to his medical providers, and, consequently, refused those demands.

## DISCUSSION

12. N.C. Gen. Stat. § 44-49 imposes a lien on recovered funds in favor of medical providers who treat the person on whose behalf recovery is made. Section (b) of the statute outlines certain exceptions to the imposition of the lien and requires that the treating physician furnish

without charge to the attorney as a condition precedent to the creation of the lien, upon request to the attorney representing the person in whose behalf the claim for personal injury is made, an itemized statement, hospital record, or medical report for the use of the attorney...and a written notice to the attorney of the lien claimed.

*Id.* Although a previous version of this statute required medical providers to file their lien claims with the clerk of court, the statute was revised effective October 1, 2001, and filing is no longer a requirement. The court concludes that the current version of § 44-49 controls in this case.

13. N.C. Gen. Stat. § 90-411 permits health care providers to impose copy fees for providing medical records and permits a physician to charge a "reasonable professional fee" for reviewing and preparing a narrative summary of the patient's medical record. It appears to the court that all the charges by CMHA and Metrolina for copies and for review of the medical records were assessed in accord with the statutory guidelines of § 90-411.

14. Olive has argued that these charges act to invalidate the liens held by CMHA and Metrolina pursuant to § 44-49. The court

disagrees. Section 44-49 must be interpreted consistent with Section 90-411 in order to give meaning to both provisions of the General Statutes. Consequently, the court concludes that the "charges" prohibited by § 44-49 do not include the reasonable de minimus fees authorized to be charged by § 90-411. It appears that Section 44-49 was designed to prevent a medical provider from extorting payment from a personal injury claimant of medical bills or additional charges as a condition to providing copies of medical records. In this case, the medical records were provided for what it would cost to make the copies, and the review charge by Metrolina was reasonable. Therefore, these charges are consistent with § 90-411 and do not act to invalidate the liens at issue.

15. Furthermore, the decision in *Professional Health Services v. Brank (In re Brank)*, C-C-86-330-P (W.D.N.C. 1986), *aff'd* by No. 87-1031 (4<sup>th</sup> Cir. 1987), controls in this case. According to *Brank*, compensation for personal injuries is not exempt from claims for funeral, legal, medical, dental, hospital and health care charges related to the injury giving rise to the compensation. *Id.* Under *Brank*, the amounts due to CMHA and Metrolina are not subject to the debtor's exemption under N.C. Gen. Stat. § 1C-1601(8).

16. Even if the court were not bound by the Fourth Circuit precedent of the *Brank* case, equitable considerations would mandate a decision for CMHA and Metrolina. It would be inequitable indeed to allow the debtor to be allowed to keep the portion of the

settlement proceeds that are subject to medical liens in favor of the providers who helped him heal.

17. The court further concludes that CMHA and Metrolina are entitled to compensation for their attorneys' fees in connection with this matter. Such fees should be paid by the debtor, and are not subject to the debtor's discharge. Accordingly, the attorneys for CMHA and Metrolina are directed to provide debtor's attorney with copies of their billing statements, and absent objection filed within ten days of service of those billing records, payment of those fees shall be allowed in full.

It is therefore **ORDERED** that:

1. The Olive Firm is to disburse \$23,765.58 from the debtor's personal injury settlement proceeds to CMHA in payment of its lien on those proceeds;


2. The Olive Firm is to disburse \$8,545.00 from the debtor's personal injury settlement proceeds to Metrolina in payment of its lien on those proceeds;

3. Attorneys for CMHA and Metrolina are to serve Olive with copies of their billing records for services rendered in their representation of CMHA and Metrolina in this matter;

4. The debtor shall have ten days from the date of service of the billing records for CMHA and Metrolina's attorneys to file objections to the same; and

5. Thereafter, the court will enter an Order determining the attorneys' fees due to CMHA and Metrolina, and requiring payment of those sums by the debtor irrespective of his Chapter 7 discharge.

6. Olive is directed not to disburse to the debtor any of the remaining funds from the debtor's personal injury settlement until after payment of the attorneys' fees determined to be due CMHA and Metrolina, and payment of the sums pursuant to paragraphs 1 and 2 of this Order.

  
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George R. Hodges  
United States Bankruptcy Judge